

THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

FARMAKEIO OUTSOURCING,)	
LLC,)	
)	
Plaintiff,)	
)	C.A. No. N24C-05-327 MAA
v.)	
)	
COALITION FOR RESPONSIBLE)	
COMPOUNDING LLC and SHAUN)	
NOORIAN,)	
)	
Defendants.)	

* * * * *

BEFORE: HON. MEGHAN A. ADAMS, Judge

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TRANSCRIPT OF DEFENDANTS' MOTION TO DISMISS
Friday, January 10, 2025

ANDREA M. SAATMAN, RPR
Official Court Stenographer

1 APPEARANCES:

2
3 BAKER & HOSTETLER, LLP
Michael E. Neminski, Esquire
4 Jeffrey J. Lyons, Esquire

5 on behalf of the Plaintiff
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9 RICHARDS LAYTON & FINGER, LLP
Katherine L. Mowery, Esquire
10 Gabriela Z. Monasterio, Esquire

11 JACKSON WALKER, LLP
Michael H. Bernick, Esquire
12

13 on behalf of the Defendants
14
15

16 ALSO PRESENT:

17 Edgar Gonzales, Esquire

18 Travis Reed, Esquire
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ANDREA M. SAATMAN, RPR
Official Court Stenographer

1 Friday, January 10, 2025
2 2:01 p.m.
3 Chambers Virtual Hearing

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5 THE COURT: Good afternoon, everyone.

6 MS. MOWERY: Good afternoon, Your Honor.

7 MR. NEMINSKI: Good afternoon, Your Honor.

8 THE COURT: Would Delaware counsel like to
9 start with introductions, please.

10 MR. NEMINSKI: Sure, Your Honor. On behalf
11 of Plaintiff, FarmaKeio, yes, myself, Michael
12 Neminski, and Jeffrey Lyons from BakerHostetler.

13 THE COURT: Okay.

14 MS. MOWERY: Good afternoon, Your Honor.
15 Kate Mowery from Richards Layton & Finger on
16 behalf of Defendants Coalition for Responsible
17 Compounding and Shaun Noorian.

18 I have on the line with me this afternoon
19 Gabriela Monasterio from my firm. And from
20 Jackson Walker, I have Mr. Mike Bernick, who will
21 be presenting on behalf of Defendants with respect
22 to the motion.

23 I also have on the line Edgar Gonzalez and
Travis Reed, who are in-house counsel for one of

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1 the members of the Coalition.

2 THE COURT: Okay. Thank you very much.

3 I'm ready to begin when you are.

4 Mr. Lyons, I forget, are you Delaware counsel
5 or pro hac?

6 MR. LYONS: Delaware counsel, Your Honor. Me
7 and Mike are both Delaware counsel.

8 THE COURT: Okay. I didn't see your name on
9 the docket. That's why I was asking.

10 MR. LYONS: Okay. Sorry about that.

11 THE COURT: All right.

12 I'd ready to proceed.

13 MR. BERNICK: May it please the Court, Your
14 Honor. My name is Mike Bernick and I'm here on
15 behalf of --

16 THE COURT: You're just going to need to
17 speak up a little bit. I can't really hear you.

18 MR. BERNICK: Absolutely, sure. My name is
19 Mike Bernick. I'm here on behalf of the
20 Defendants, the Coalition For Responsible
21 Compounding and Mr. Shaun Noorian. I'm here from
22 Jackson Walker.

23 Your Honor, when Delaware courts assess

1 motions to dismiss filed on the basis of forum non
2 conveniens, what Delaware courts must assess is
3 whether or not there is an overwhelming hardship
4 and inconvenience to defendant for continuing
5 litigation within Delaware. And while Delaware
6 courts note that those are rare circumstances,
7 rare cases, this case, Your Honor, is certainly
8 one of those cases.

9 The reason being that, at its core, the crux
10 of this case will boil down to whether or not the
11 Plaintiff, FarmaKeio Compounding, which is a Texas
12 entity, engaged in illegal activity at its Texas
13 facility; namely, producing compounded
14 pharmaceuticals with the use of substances that
15 are banned by the FDA.

16 That is what this case will truly boil down
17 to, whether that actually happened or not, because
18 this defamation case is based on allegations made
19 that FarmaKeio was, in fact, doing that.

20 And one of the defenses that the Coalition
21 and Mr. Noorian will assert is the truth, the
22 truth of those statements. And the truth is a
23 defense to a defamation claim.

1 And so, looking at the core of this case, the
2 question will resolve around whether or not
3 FarmaKeio, a Texas entity, was compounding and
4 doing things in an illegal manner in Texas. And
5 that's a critical determination that can't be
6 ignored.

7 The touch point to Delaware in this case, the
8 sole touch point, is the fact that the Coalition
9 was formed here. That's it. Everything else
10 points outside of Delaware.

11 And the burden, the overwhelming hardship,
12 the inconvenience to the Coalition and Mr. Noorian
13 for litigating this case regarding illegal
14 activity that occurred in Texas is overwhelming.

15 And I'll walk the Court through that, but
16 first of all --

17 THE COURT: So you need to state it with
18 particularity, so I'm waiting to hear about the
19 particulars.

20 MR. BERNICK: Absolutely, Your Honor.

21 THE COURT: Okay.

22 MR. BERNICK: I'll jump into the *Cryo-Maid*
23 factors, which are the factors this Court

1 considers. So the first two factors that I want
2 to discuss, which are somewhat related, are the
3 relative ease of access to proof and the
4 availability of compulsory process for witnesses.

5 Your Honor, the issue here is, as I asserted
6 or as I mentioned, the Coalition and Mr. Noorian
7 will be asserting the defense of the truth. The
8 truth lies at the plant, at the facility in Texas.

9 And while we will be able to depose certain
10 witnesses, we will not be able to compel many of
11 those witnesses to trial. And I'm not talking
12 about officers or directors of the Plaintiff. I'm
13 talking about the frontline workers, the people
14 involved in acquiring materials used for
15 compounding, the pharmacists there, the people
16 that were actually firsthand in knowledge,
17 firsthand involved in this process.

18 And those people are the folks that we will
19 not be able to compel to testify live in trial and
20 be assessed and have their credibility assessed in
21 front of a Delaware jury.

22 Now, frankly, Your Honor, as I'm sure Your
23 Honor well knows, the common refrain from jurors

1 after trials is video depositions are way too long, they
2 are not interesting, those sorts of things, right?

3 And that is what FarmaKeio is placing the
4 burden on Defendant to have to do, is present
5 multitudes of witnesses via video deposition rather than
6 having their credibility assessed in person.

7 And so, essentially, the Defendants are
8 carrying the overwhelming burden of having to try
9 that case at a disadvantage from the start on the
10 question of whether illegal activity occurred in
11 Texas.

12 So the availability of compulsory process of
13 witnesses, that factor falls in favor of
14 Defendants, as does the relative ease of access of
15 proof.

16 THE COURT: How many people are we talking
17 about? You have to state with particularity. Who
18 exactly are you worried about? How many people
19 are we talking about in terms of witnesses?

20 MR. BERNICK: So, Your Honor, with this case
21 being where it is, in its infancy, and the
22 Coalition not having a roster of FarmaKeio's
23 employees, all we have right now is, you know,

1 basic job titles of where people would be in the
2 compounding process.

3 So while we're not able to identify specific
4 witnesses by name, we know that those people
5 exist, and those people exist only in Texas, not
6 in Delaware.

7 THE COURT: How many people?

8 MR. BERNICK: Your Honor, I don't have an
9 exact number right now, but what I can tell you is
10 would want somebody from the supply line. We
11 would want somebody from -- we would want a
12 pharmacist. We would want somebody in the
13 marketing department, the packaging department.

14 Things like folks in those lines that can
15 take the supply chain of the product from the time
16 it comes in the plant as raw materials all the way
17 out. And that will show how that product was
18 made, how it was used or what was used in it,
19 excuse me, and how it was marketed.

20 Because, as the letters attached to the
21 complaint show, the issue here is that FarmaKeio
22 had kind of a shadow product list that was only
23 accessible by QR code, not accessible to the

1 public, but was still selling illegal compounded
2 pharmaceuticals using illegal peptides using this
3 kind of shadow menu list of the product. And so,
4 we would need to have witnesses from each step
5 along the product line to show that.

6 So, Your Honor, with the relative ease of
7 access to proof and the available of compulsory
8 process for witnesses favoring Defendants, we
9 submit that, for those two *Cryo-Maid* factors, they
10 favor the Defendant.

11 The third *Cryo-Maid* factor is the possibly to
12 view the premises. Again, the premises that would
13 be at issue here that is central to the case is in
14 Texas. It's FarmaKeio's own facility outside of
15 Colleyville, Texas.

16 There's no premises that's at issue in
17 Delaware. And we believe that the trier of fact
18 could gain some knowledge, gain some
19 understanding, become better suited to understand
20 the facts of this case having an opportunity to
21 view that facility, which is not something that
22 can occur if this case stays in Delaware.

23 Whether the controversy is dependent on state

1 law is the fourth *Cryo-Maid* factor, Your Honor.
2 And, in this case, there's no dispute that this is
3 a tort law case, a garden variety tort law case in
4 that respect. We're not talking about robust
5 issues of foreign law.

6 But what that actually leans towards is that
7 Texas has a greater interest in how its laws are
8 applied to facilities and businesses in its state
9 and not Delaware here where we'd be trying this
10 case and applying Delaware law regarding a Texas
11 facility potentially or applying Texas law in
12 Delaware.

13 Essentially, Your Honor, any injury occurred
14 in Texas, so we would submit to the Court that
15 Texas law would apply but where Delaware bears no
16 substantial relationship to the law, the alleged
17 injuries, or the underlying facts.

18 THE COURT: Which case do you believe that
19 you've cited helps you the most on the forum non
20 conveniens grounds?

21 MR. BERNICK: Sure, Your Honor. We would
22 submit two cases, Your Honor. The first would be
23 the *Schmidt v. Washington Newspaper* case. In that

1 case, the motion to dismiss was granted because
2 the overwhelming majority of the evidence in the
3 case was located in California and none was
4 located in Delaware.

5 If you would like, Your Honor, I can give you
6 a brief recitation of the facts of that case if
7 that would be helpful for you. So, in that case,
8 there was a newspaper article published about a
9 Navy SEAL engaging in some illegal activity.

10 And the plaintiff's picture was used as the
11 alleged Navy SEAL, when, in fact, he was not the
12 Navy SEAL. The Navy SEAL -- the plaintiff lived
13 in California. The publication came out of
14 Washington, D.C., and which was run by a Delaware
15 company.

16 The Court assessed the *Cryo-Maid* factors and
17 really paid a lot of attention to the fact that
18 all of the evidence about any injury to the
19 plaintiff's reputation from being associated with
20 such alleged illegal activity would have been felt
21 in California, the witnesses would have been
22 there, California would have had a greater
23 interest in applying its law to these facts.

1 So we submit the *Schmidt* case on that front,
2 Your Honor, and we will note that the *Schmidt* case
3 applies a lower standard than the overwhelming
4 hardship and inconvenience standard for the forum
5 non conveniens analysis, but at the same time
6 still instructive on assessing these issues. And
7 we believe when assessing these issues through
8 that lens, we overcome the overwhelming hardship
9 and inconvenience there.

10 The second case, Your Honor, is *Fenix v.*
11 *Scission*, which is a 1970 case. That case was
12 regarding a property dispute out of the state of
13 Washington and against the Delaware company.

14 And the key holding in that case was that the
15 case was going to be more expeditiously and
16 inexpensively tried in Washington because the
17 issue, the premises, the location at issue was in
18 Washington. The proof was there and whether or
19 not the facility in Washington had been properly
20 constructed.

21 And so, the access of proof burden on the
22 defendants, it was not going to be able to take
23 third-party witnesses or party witnesses from the

1 plaintiff and bring them into the Delaware court
2 without great expense, great inconvenience, and
3 hardship to putting on its case at trial because
4 it could not compel all of the witnesses that it
5 would like to.

6 So we would submit those two cases support
7 our position, Your Honor.

8 THE COURT: Okay.

9 MR. BERNICK: Quickly, Your Honor, moving on,
10 with the sole touch point to Delaware in this case
11 being the formation of the Coalition in Delaware
12 which is headquartered in Texas, there is an
13 attenuated relationship between the underlying
14 facts in this case and Delaware. There's only one
15 touch point.

16 Everything else focuses outside of Delaware.
17 Everything else really points to Texas. And
18 everything that the Coalition and Mr. Noorian
19 would be needing to prove its defense of the truth
20 is focused in Texas.

21 And the issues of bringing in that proof,
22 those witnesses, which are not officers or
23 directors or corporate representatives of

1 FarmaKeio to Delaware, would be extremely
2 difficult, if not impossible.

3 THE COURT: How many cases do you think that
4 are filed in Delaware actually have to do with
5 anything happening in this state?

6 MR. BERNICK: I believe that there are -- I'm
7 sorry. Can I hear the question one more time,
8 Your Honor?

9 THE COURT: Sure. How many cases that are
10 filed in Delaware because a company is a Delaware
11 cooperation actually have anything to do with
12 anything that happened in this state?

13 MR. BERNICK: Your Honor, I will concede that
14 there are some. And, in a lot of those cases --
15 you know, as we all know, Delaware is a hotbed for
16 corporate formation and corporate governance
17 issues.

18 And there are corporate governance cases that
19 talk about the importance of the defendant being a
20 Delaware entity and Delaware's interest in making
21 sure that its Delaware-formed entities are being
22 administered and governed in accordance with
23 Delaware standards.

1 This is not one of those cases. The
2 formation of the Coalition in Delaware has nothing
3 to do with whether or not there's any truth or
4 falsity to the statements made about the claim.
5 So that's where I would separate those cases, Your
6 Honor.

7 Moving on, Your Honor, the Coalition and
8 Mr. Noorian, you know, are here because the
9 Coalition believes in responsible compounding. As
10 part of its mission, it self-regulates in the
11 industry. It sends the state boards the pharmacy
12 complaints that it believes are true. And that's
13 why we're here.

14 And the proof of that truth is not located in
15 Delaware, and it would exercise an extreme
16 hardship, an overwhelming hardship, to the
17 Coalition and Mr. Noorian if it had to try this
18 case with one arm tied behind their back with only
19 depositions at trial and not allow the jurors to
20 really assess the credibility of the FarmaKeio
21 witnesses on whether they are engaging in illegal
22 activity.

23 So, with that, Your Honor, I will go onto the

1 sixth factor, which is other practical problems
2 that will make trial easy, expeditious, and
3 inexpensive. As mentioned, all of the witnesses
4 are in Texas for the Plaintiff. All of the
5 Coalition is in Texas.

6 There's one person associated with the
7 Coalition in New Jersey who would come down to
8 Texas. This whole trial would be more easy and
9 expeditious if it was filed in Texas rather than
10 being filed in Delaware instead of hauling
11 everyone up to Delaware to try the case.

12 So, for those reasons, Your Honor, we submit
13 that the overwhelming hardship and inconvenience
14 favors this case being dismissed from Delaware and
15 that the Court find that this is a rare case in
16 which the forum non conveniens should be granted.

17 THE COURT: Thank you.

18 MR. NEMINSKI: May I proceed, Your Honor?

19 THE COURT: Yes. Thank you.

20 MR. NEMINSKI: Thank you, Your Honor. I'd
21 like to respond to a couple of points made by the
22 opposing counsel for the Defendants, but first,
23 just to set the stage as to what I'd like to

1 discuss and focus specifically on, the *Cryo-Maid*
2 factors.

3 As my opposing counsel noted, the six factors
4 that'll be used to demonstrate the overwhelming
5 hardship that Defendants need to show in order to
6 have this case dismissed are the relative ease of
7 access of proof, the availability of compulsory
8 process for the witnesses, the possibility of
9 viewing the premises, whether Delaware law
10 applies, the pendency or non-pendency of similar
11 actions in another jurisdiction, and other
12 practical problems with litigating in Delaware.

13 If Your Honor would permit me a little bit of
14 flexibility, I'd like to talk about the pendency
15 or non-pendency of similar actions in another
16 jurisdiction factor first.

17 THE COURT: Sure.

18 MR. NEMINSKI: It's a factor that was really
19 not touched on by my opposing counsel, and that's
20 because I think this factor is going to be
21 influential in the Court's analysis.

22 The Delaware Supreme Court has held that in
23 the absence of another pending litigation, it's a

1 significant factor that may be overcome only in
2 the most compelling circumstances. And that's
3 *Berger v. Intelident*, 906 A.2d 137 through 138.

4 Other Superior Court decisions have stressed
5 that this factor is important, if not a
6 controlling consideration, and when there is no
7 other pending litigation, if this factor is not
8 dispositive, it weighs heavily against dismissal.
9 And that's the *In Re: Asbestos Litigation* at 929
10 A.2d 387.

11 Defendants in their briefing try to minimize
12 this factor by pointing to the fact that the
13 statute of limitations on Plaintiff's claims has
14 not yet expired and that Plaintiffs can easily
15 refile in Texas.

16 That's a little bit of a mischaracterization
17 as to the burden Plaintiff will suffer if this
18 case is dismissed. Plaintiff, of course, will
19 suffer some delay if it has to refile in Texas and
20 will incur additional expense if having to refile
21 in Texas.

22 THE COURT: I'm not aware that the statute of
23 limitations, whether it's going to run or not, is

1 really a consideration in this analysis.

2 MR. NEMINSKI: I think Defendants' point,
3 Your Honor, is that we can just ultimately refile
4 relatively quickly in Texas, but other Superior
5 Court rulings have noted that even at early stages
6 of this litigation, the potential burden and
7 expense of having to refile in another state is
8 enough to weigh in favor of keeping the case in
9 Delaware.

10 So, therefore, Your Honor, I would submit
11 that this factor weighs heavily in favor of
12 keeping the case in Delaware, and therefore,
13 against dismissal.

14 Moving to the relative ease of access of
15 proof and the availability of the compulsory
16 process for witnesses, I'd like to discuss these
17 factors together as well.

18 As an initial matter, Your Honor, Defendants'
19 briefing and argument seems to compare the two
20 forums and try to point to which forum is the most
21 convenient, but that's not necessarily the
22 standard.

23 The Defendants need to show an overwhelming

1 hardship for litigating in Delaware, and they
2 cannot show that hardship.

3 They point to a number of documents that may
4 be located in Texas, but modern methods of
5 technology and document production make it
6 relatively easy to collect documents and produce
7 them to another side even from outside of
8 Delaware.

9 The only other witnesses that the Defendants
10 have noted, Anthony Connors, he's a New Jersey
11 resident, he's not subject to compulsory process
12 in Texas. Shaun Noorian, he's a Defendant in this
13 action. He's subject to the jurisdiction of
14 Delaware.

15 The defense counsel in his presentation
16 talked a lot about FarmaKeio's employees. We
17 would, of course -- we understand that by filing
18 in Delaware, we would be cooperative with the
19 Court and have those employees available for
20 testimony, if needed.

21 As to the potential Coalition's employees,
22 those witnesses are controlled by the Defendant,
23 and at least one Delaware case has found that

1 defendant's employees who are paid by and,
2 therefore, controlled by the defendant would, of
3 course, show up at a defendant's request; and
4 therefore, does not weigh in favor of dismissal.

5 And also, Your Honor, I would submit that the
6 Defendants are overstating their burden for this
7 factor. The parties can take depositions and use
8 deposition testimony at trial. There are several
9 decisions by Delaware courts holding that this is
10 an adequate substitute for live testimony.

11 And, if needed, Your Honor, the Court can
12 issue a commission to allow the party to seek
13 relief against a witness in the appropriate court
14 from out of state. This would be an easy way to
15 obtain testimony for the case, if needed.

16 Moving to the possibility of viewing the
17 premises, Defendants' opening and reply brief and
18 their argument today failed to demonstrate why the
19 inspection of the premises is necessary.

20 Whether the Plaintiff is engaging in illegal
21 compounding of drugs is something that can be
22 shown through document production and testimony of
23 witnesses. They haven't explained why it's needed

1 for their defense, and I would argue it doesn't
2 demonstrate overwhelming hardship.

3 But putting that aside, Your Honor, an
4 inspection of the premises sort of by Defendants'
5 counsel, by Plaintiff's counsel will surely result
6 in a number of videos and photos that can be
7 submitted to the trier of fact, that can be
8 reviewed by the trier of fact, and ultimately,
9 don't demonstrate overwhelming hardship.

10 A live view of the premises in this day and
11 age is ultimately not something that has
12 significant weight in this analysis, especially in
13 the day and age of Google Maps and other
14 technology that can assist with this process.

15 Turning to the factor of whether this
16 controversy is dependent on the application of
17 Delaware law, the factor is ultimately important
18 for the Court's consideration when the case turns
19 on an unsettled issue of foreign law. However,
20 when the case involves settled foreign law, this
21 factor does not tend to weigh heavily in favor of
22 the Defendants' motion.

23 This is a case involving tort law. Plaintiff

1 hasn't done the analysis on the potential choice
2 of law, but even if Texas law applies, Delaware
3 courts are fully equipped to determine Texas law,
4 and courts have ultimately found that this factor
5 does not weigh in favor of dismissal when you're
6 determining settled law from other states in the
7 United States.

8 It's not a case like *Hall* or *Martinez v.*
9 *Dupont*, which is 86 A.3d 1102, which was an issue
10 of first impression under Argentine law. This is
11 a fairly well-settled issue that Delaware courts
12 are fairly equipped to determine, and therefore,
13 it does not weigh in favor of dismissal.

14 Finally, Your Honor, turning to other
15 practical problems, the Defendants ultimately
16 don't mention any. They simply recycle their
17 arguments related to other factors. Their opening
18 brief, reply brief, and arguments simply just
19 recite the same conclusions. They don't identify
20 anything new.

21 What the Defendants failed to mention that is
22 ultimately relevant to this factor is Delaware's
23 interest in regulating the conduct of entities

1 organized under its laws and the fiduciaries who
2 serve those entities. I would argue, Your Honor,
3 that that weighs in favor of keeping the case in
4 Delaware, as do many of the other *Cryo-Maid*
5 factors.

6 Briefly, Your Honor, I just want to touch on
7 the two cases my opposing counsel noted in his
8 presentation. The *Schmidt v. Washington Newspaper*
9 case is actually a case cited by the Plaintiff in
10 Plaintiff's opposition brief. It's not a case
11 cited by Defendants in their briefing.

12 And that case involved a case where there was
13 a prior pending litigation in another case. It's
14 not this case. It's easily distinguishable.

15 And, Your Honor, my opposing counsel brought
16 up -- and I don't have the note down -- I believe
17 a *Fenix* case. I don't believe that's cited
18 anywhere in the briefing. It's not a case that
19 I'm familiar with at the moment, and so, I'm not
20 sure of its relevance here in the analysis.

21 THE COURT: I couldn't find it either, but
22 it's from the 1970s, and I think technology has
23 changed a little bit since then.

1 MR. NEMINSKI: Fair enough, Your Honor. But,
2 with that said, I would submit that this is not
3 one of the rare and extraordinary cases that
4 require dismissal, especially when there's no
5 other pending action.

6 And Plaintiff choose to file its complaint in
7 Delaware, so I would submit, Your Honor, and
8 Plaintiff submits that the motion be denied. But
9 with that said, if Your Honor has any questions,
10 I'd be happy to answer them. If not, I'll reserve
11 the rest of my time.

12 THE COURT: No, thank you. I appreciate it.

13 MR. NEMINSKI: Thank you, Your Honor. I
14 appreciate it.

15 MR. BERNICK: Your Honor, just a couple of
16 points on rebuttal?

17 THE COURT: Sure.

18 MR. BERNICK: Your Honor, just to clarify,
19 the *Fenix* case we mentioned on Page 5 of our reply
20 brief.

21 THE COURT: Okay. And what's the cite for
22 that one?

23 MR. BERNICK: Sure. It's *Fenix v. Scission*,

1 *Inc. v. Underground Storage, Inc.*, 262 A.2d 260
2 and a pincite to 262, Delaware Superior Court,
3 1970.

4 THE COURT: All right.

5 MR. BERNICK: Okay. Your Honor, to address a
6 couple points in response from Plaintiff's
7 counsel, as this Court has noted, the ability to
8 transmit electronic evidence, the ability to move
9 documents electronically, while that may lessen
10 the burden of litigating elsewhere, that does not
11 render the first *Cryo-Maid* factor meaningless.

12 It's still important that there's a relative
13 ease of access to proof for the Defendant. And
14 just because we can send electronic documents back
15 and forth does not negate this factor wholesale.

16 Also, because this Court has recognized video
17 depositions and teleconference, they can be
18 alternatives; however, there is no substitute for
19 in-person testimony, and the availability of these
20 methodologies is not dispositive of the first
21 *Cryo-Maid* factor or the second *Cryo-Maid* factor.

22 And so, we would submit to the Court that
23 we're focusing on the first two factors primarily,

1 Your Honor, of the *Cryo-Maid* analysis, the
2 relative ease of access to proof, the availability
3 of compulsory process of witnesses and in addition
4 to the other factors we cited earlier.

5 But the real factor here is that we are
6 trying to prove the truth of the allegations made
7 about this Texas facility. What opposing counsel
8 just said about making witnesses available and
9 working with the court, we are still subject to
10 only bringing witnesses to trial that Plaintiffs
11 allow to come to trial.

12 And that's going to put us with one arm tied
13 behind our back as far as bringing in witnesses
14 and having the jurors in this case assess the
15 credibility of these witnesses about whether
16 illegal activity actually transpired in Texas and
17 assessing that credibility live in person.

18 And for these reasons, Your Honor, we submit
19 that the *Cryo-Maid* factors favor in finding an
20 overwhelming hardship and inconvenience to the
21 Defendants, and that this case should be
22 dismissed.

23 THE COURT: Thank you. I appreciate it.

1 Thank you, everybody, for your argument
2 today. If you want to place yourselves on mute,
3 I'm prepared to issue my decision.

4 As you all know, in April of this year, the
5 Coalition filed a complaint against FarmaKeio with
6 the Colorado State Board of Pharmacy. The
7 complaint accuses FarmaKeio of compounding certain
8 medicines in violation of federal law.

9 The Coalition also filed complaints with the
10 relevant state boards in Wisconsin, Kentucky, and
11 Missouri. FarmaKeio alleges that these complaints
12 contain false and defamatory statements.

13 The action that was filed here in Delaware
14 was the first-filed action between the parties,
15 and there's no other pending lawsuits. The
16 Coalition filed in Texas for a nonprofit entity
17 status on July 10, 2024.

18 The Defendants filed the motion to dismiss in
19 August of 2024, and the matter has now been fully
20 briefed since the end of October. The Defendants
21 have filed a motion to dismiss only on forum non
22 conveniens grounds. This is the first-filed case
23 between the parties and there is no other pending

1 litigation.

2 As such, the *Cryo-Maid* test applies, and the
3 Defendants will need to show via the *Cryo-Maid*
4 factors that litigating in Delaware will create an
5 overwhelming burden or overwhelming hardship.

6 I am going to go through all the factors
7 here. First I'm going to start off with the
8 Plaintiffs' state of incorporation and the
9 Defendants' purported lack of connection to
10 Delaware tied in with the fact that the Defendant
11 is a Delaware corporation.

12 The Defendants argue that Plaintiff's choice
13 of forum should not be given as much weight
14 because the Plaintiff is a Texas corporation, and
15 the only connection this case has to Delaware is
16 the Coalition's place of incorporation.

17 Our Supreme Court back in 2001 has rejected
18 this argument in *Warburg, Pincus Ventures, L.P. v.*
19 *Schrappner*, 774 A.2d 264, like I said, from 2001.
20 And I'm just going to read a quote from that case.
21 And this is from Page 999.

22 "Our Supreme Court has said because the
23 defendant has the burden to demonstrate

1 overwhelming hardship from litigating a
2 first-filed case in Delaware, this court has
3 previously held that whether an alternative forum
4 would be more convenient for the litigation or
5 perhaps a better location is irrelevant.

6 And the trial court is not permitted to
7 compare Delaware, the Plaintiff's chosen forum,
8 with an alternate forum and decide which is the
9 more appropriate location for the dispute to
10 proceed."

11 I'll also notice that the Supreme Court goes
12 on to say that "previously, the Supreme Court has
13 rejected the argument that some lesser standard
14 applies where the plaintiff is not a Delaware
15 citizen and where the defendant's only connection
16 to Delaware is its status as a Delaware business
17 entity."

18 I'm citing a previous -- I'm sorry. I'm
19 citing the *Candlewood* case which is citing
20 *Warburg*. I apologize. Citing *Warburg*, the Court
21 rejected that argument.

22 So the first quote I had -- I apologize -- is
23 from *Candlewood Timber Group v. Pan American*

1 *Energy*, 859 A.2d 989, from the Delaware Supreme
2 Court in 2004.

3 Moving on to the different factors: Access
4 to proof. Defendants' argument focuses on
5 convenience, not overwhelming burden. The
6 Defendants have not stated that obtaining any
7 evidence would impose a burden while litigating in
8 Delaware, merely that most evidence is in Texas.

9 The Defendants, as I tried to get at earlier
10 in the argument today, have not discussed any
11 evidence with particularity as required.
12 Therefore, I don't believe that this factor weighs
13 in favor.

14 The second, availability of compulsory
15 process. Again, I don't believe that the
16 Defendants have provided enough here, as these
17 parties are aware, especially in the age of Zoom
18 and other technology.

19 I tried to press the Defendants' counsel
20 about which witnesses exactly may be unavailable,
21 and the best that they can do is provide some job
22 titles of people that they would like to depose
23 potentially and maybe bring to trial, but that's

1 not enough to satisfy the overwhelming hardship
2 standard.

3 I also find that the view of the premises is
4 not really relevant. The parties, which appear to
5 both have some connection to Texas, can go to
6 Texas, take pictures or videos, and show them in
7 front of the jury; which, by the way, is something
8 that would happen even if the evidence was located
9 here.

10 It's unlikely that any jury here in Delaware
11 would be going out to some location in Delaware to
12 view the premises, even if it happened here. So
13 pictures and videos are typically how this works,
14 in any event.

15 Again, whether the controversy is dependent
16 on the application of Delaware law, even assuming
17 that Texas law applies, this factor adds little,
18 although some, weight in favor of dismissal.

19 The pendency of other litigations. I'll note
20 that the *Schmidt v. Washington Newspaper* case,
21 2019 4785560 from our court from September of
22 2019, in that case, there was another action that
23 had been filed in the United States District Court

1 for the Southern District of Florida almost a year
2 before the Delaware action had been filed.

3 So those circumstances are completely
4 different than what we have here, and I don't find
5 that that case really moves the needle in any
6 direction for the Defendants' argument.

7 Other practical issues, as counsel has
8 pointed out for the Plaintiffs and as discussed
9 here today, evidence can be transported
10 electronically, people can easily travel from
11 Texas to Delaware.

12 We can do things now in court that maybe
13 weren't even available or offered a couple years
14 ago such as testifying over Zoom even in a jury
15 trial setting. So I don't believe that that
16 factor weighs in favor of dismissal as well.

17 Therefore, I find that I am going to deny the
18 motion to dismiss because the Defendants have not
19 met their burden of satisfying the overwhelming
20 hardship standard.

21 Does anybody have any questions?

22 MR. NEMINSKI: Nothing from Plaintiff, Your
23 Honor.

1 THE COURT: Okay.

2 I know my friends from Delaware know that our
3 courts, especially those of us who are on CCLD,
4 are also handling a lot of Chancery matters right
5 now, and my trial schedule is booked up probably
6 for the next year and a half. Every week, I have
7 either a Chancery or a CCLD trial.

8 There are some holes in my schedule, but I
9 would suggest that you all perhaps just reach out
10 to the court to get a trial date in whatever time
11 frame you think you may be able to do it, and we
12 will work with you as best as we can to try to fit
13 you in.

14 I typically don't schedule CCLD and Chancery
15 trials -- I typically don't double book them
16 because whenever I think a case is going to
17 settle, it doesn't, and then, inevitably, two
18 cases will be tried at the same time.

19 But as Delaware counsel knows, CCLD cases
20 take priority over every other case on my docket
21 except for a first-degree murder trial. So I do
22 schedule trials throughout the year even when I'm
23 in my criminal rotation.

ANDREA M. SAATMAN, RPR
Official Court Stenographer

1 So whatever quarter in whatever year that you
2 are looking at, just reach out to Lauren, my
3 assistant, and she can help you out with the
4 schedule.

5 And then after you get a trial date, I would
6 just expect for you all to work together to put
7 together a schedule. We do have some samples in
8 my preferences, and I know both Delaware counsel
9 here has appeared in front of me before and are
10 familiar with my preferences in terms of the
11 scheduling orders.

12 So with that being said, I hope everyone has
13 a great weekend. And thank you again for the
14 arguments today. I always appreciate hearing from
15 such great counsel.

16 Have a good day.

17 MR. NEMINSKI: Thank you, Your Honor.

18 MR. BERNICK: Thank you, Your Honor.

19 MR. LYONS: Thank you, Your Honor.

20 (This matter concludes at 2:37 p.m.)
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23

CERTIFICATION OF STENOGRAPHER

I, Andrea Saatman, RPR, Official Court
Stenographer of the Superior Court, New Castle
County, State of Delaware, do hereby certify that
the foregoing is an accurate transcript of the
testimony adduced and proceedings had, as reported
by me, in the Superior Court of the State of
Delaware in and for New Castle County, in the case
herein stated, as the same remains of record in
the Office of the Prothonotary of New Castle
County at Wilmington, Delaware.

This certification shall be considered null
and void if this transcript is disassembled or
disseminated in any manner by any party without
express and written authorization of the signatory
below.

WITNESS, my hand, this 8th day of February,
A.D., 2025.

/s/ Andrea M. Saatman
Andrea M. Saatman, RPR
Official Court Stenographer